

PUBLIC SANCTIONS

FY 2015

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**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

**CJC Nos. 14-0102-DI, 14-0165-DI, 14-0224-DI, 14-0403-DI,
14-0435-DI, 14-0468-DI, 14-0472-DI, 14-0473-DI, 14-0484-DI,
14-0508-DI, 14-0529-DI, 14-0654-DI & 14-0655-DI**

PUBLIC REPRIMAND

**HONORABLE DENISE V. PRATT
FORMER JUDGE, 311TH JUDICIAL DISTRICT COURT
HOUSTON, HARRIS COUNTY, TEXAS**

During its meeting on August 13-15, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Denise V. Pratt, Former Judge of the 311th Judicial District Court, Houston, and Harris County, Texas. Judge Pratt appeared before the Commission on August 14, 2014, and gave testimony.

BACKGROUND INFORMATION

Judge Pratt was elected to the 311th Judicial District Court bench¹ in November 2010, and assumed the bench on January 1, 2011. Starting in October 2013, the Commission began receiving complaints filed by attorneys, litigants, and confidential sources alleging numerous incidents of misconduct against Judge Pratt, including malfeasance by backdating court orders and judgments, excessive and unreasonable delays in issuing decisions, a lack of diligence in attending to the business of the court, and incompetence in performing the duties of office. Many of the matters raised in the complaints became the subject of extensive local media attention in the Houston area. In particular, it was disclosed in the press that allegations contained in the complaint of attorney Greg Enos had become the subject of a criminal investigation by the Harris County District Attorney's Office into the conduct of Judge Pratt.

In Enos' criminal complaint, Judge Pratt was accused of backdating court orders and renditions in order to cover up for the lengthy delays in her rulings in contested family law cases. It was alleged that Judge Pratt backdated the orders to make it appear that she had issued rulings

¹ The 311th District Court is one of ten family law courts in Harris County that hears divorce and child related matters.

sooner than she actually did and that the judge was assisted by court staff, who rolled back the clerk's date stamp, then initialed and filed backdated orders knowing that Judge Pratt had not signed the documents on the dates she claimed. Enos provided examples in six cases of orders or renditions that appeared to have been signed by Judge Pratt months earlier but that were not filed or provided to the parties or their attorneys until much later and well after the time to appeal had expired. According to media reports, Judge Pratt's lead clerk, Marilyn Epps, who had twenty-five years of experience as a Harris County court clerk, resigned following an investigation by the Harris County District Clerk's office into the backdating allegations after admitting to one instance of rolling back her date stamp to match what Judge Pratt had written as the date she purportedly signed the rendition. However, there appeared to be no evidence to support a finding that Epps engaged in this conduct at Judge Pratt's request, direction, or instruction. In December 2013, a grand jury investigating Enos' complaint against Judge Pratt declined to indict the judge. During this time, Judge Pratt filed to run for re-election and became one of four candidates vying for election to the 311th District Court in the March 2014 Republican Primary.

In January 2014, additional complaints were filed with the Commission after Judge Pratt issued dismissal orders disposing of more than approximately 600 pending cases on December 30-31, 2013. According to the complaints, without notice to the parties or their attorneys or an opportunity to be heard, cases were dismissed for want of prosecution even though a substantial number of the cases had recent activity; were awaiting the judge's signature on orders following trial, mediation, or arbitration; were set for trial in 2014; or had already been transferred to other courts following Judge Pratt's recusal. Enos filed a second criminal complaint with the Harris County District Attorney's office concerning the *en mass* dismissals alleging that Judge Pratt illegally purged her docket on the last two days of 2013 to cover up the growing backlog caused by her failure or inability to timely handle the business of the court.

Although Judge Pratt received the most votes in the March 2014 Republican Primary, she did not receive at least 50% of the votes and her name was placed on the ballot for the May 2014 Republican Primary Run-off election. However, on March 28, 2014, after Enos filed a third criminal complaint against her with the Harris County District Attorney's Office, Judge Pratt sent a letter to the Governor of Texas announcing that she was immediately resigning from office. Despite her resignation, Judge Pratt's name remained on the ballot for the May 2014 run-off election, which she lost.

In August 2014, the Commission concluded its investigation into the allegations filed against Judge Pratt. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Denise V. Pratt was Judge of the 311th Judicial District Court in Houston, Harris County, Texas.

DELAYS IN RULING

The Bates Case

2. Kevin Bates and Melissa Bates were divorced in July 2010.

3. In the Agreed Final Decree of Divorce, Kevin was awarded a modified possession order regarding the couple's three children.
4. On March 2, 2012, Kevin filed a Motion for Enforcement of Possession or Access, alleging that Melissa interfered with his right to access and visitation regarding his 17 year-old daughter.
5. Melissa had also filed motions for enforcement against Kevin. Both Kevin's and Melissa's enforcement motions were scheduled to be heard on June 28, 2012.
6. On June 28, 2012, Judge Pratt presided over a hearing concerning Kevin's enforcement motion, but did not conduct a hearing on Melissa's pending motions.
7. At the conclusion of the hearing on Kevin's motion, Judge Pratt stated that she would reserve her ruling until Melissa's motions for enforcement were heard at a later date; however, no hearings were ever held on Melissa's motions for enforcement.
8. On January 15, 2013, Kevin filed a Motion for Ruling and/or Judgment on his motion for enforcement.
9. On February 6, 2013, the amicus attorney appointed to the *Bates* Case filed a response to Kevin's motion.
10. Kevin's motion was set for a hearing on February 12, 2013 and again on February 28, 2013, but no hearings were conducted because Judge Pratt failed to appear on either of those dates.
11. In April 2013, Kevin filed a Petition for Writ of Mandamus to the 14th Court of Appeals seeking to have that Court compel Judge Pratt to issue a ruling on his still pending motion for enforcement.
12. On May 14, 2013, the 14th Court of Appeals issued an opinion conditionally granting the writ of mandamus and directing Judge Pratt to rule on Kevin's motion for enforcement within fifteen days.
13. In its opinion, the 14th Court of Appeals noted the importance of prompt rulings in cases concerning parental rights and the best interests of children and concluded that the delay in the *Bates* Case was unreasonable. The Court went on to state:

In suits involving the parent-child relationship, "[j]ustice demands a speedy resolution," and mandamus may issue "to protect the rights of parents and children." We hold that respondent has abused her discretion in failing to timely render a decision on relator's pending motion for enforcement of his right to possession and access to his child.
14. On May 15, 2013, a document entitled, "Judge's Rendition" was faxed to the attorneys in the *Bates* Case from Judge Pratt's court. The document was not date stamped by a clerk, nor was it imaged or entered in the court's computer docket.
15. The document, dated August 1, 2012, was written entirely in Judge Pratt's handwriting and contained Judge Pratt's handwritten ruling granting Kevin's motion for enforcement.
16. According to the rendition, Melissa had been found in contempt of court following the June 28, 2012 enforcement hearing for denying visitation to Kevin and was ordered to

spend 180 days in jail unless she paid Kevin's attorney's fees and no longer interfered with his right to access and visitation.

17. There was no mention in the rendition that Melissa's motions for enforcement had been considered or resolved by Judge Pratt prior to issuing her decision.
18. Although none of the attorneys or litigants received a copy of the August 1, 2012 rendition prior to May 15, 2013, Judge Pratt testified before the Commission that she issued her ruling and prepared the rendition or about August 1, 2012.
19. Judge Pratt also testified that in response to the 14th Court of Appeal's ruling, Deborah Selden, the senior staff attorney for the Administrative Office of the Harris County District Courts, sent a letter to the Court on behalf of Judge Pratt representing that Judge Pratt had issued the court's rendition in the *Bates* Case on August 1, 2012, and had signed an Order of Enforcement on May 21, 2013.
20. However, Judge Pratt provided no explanation as to why Selden's letter came after the Court's ruling and why it had not been sent in the weeks following the April 2013 filing of the Petition for Writ of Mandamus.
21. Additionally, Selden's letter to the Court contained no explanation as to why the August 1, 2012 rendition had not been filed or served on the parties or their attorneys until May 15, 2013.
22. In her testimony before the Commission, however, Judge Pratt stated that on or about August 1, 2012, she gave the signed rendition to a court clerk, who was supposed to file it and forward a copy to the attorneys; however, according to Judge Pratt, the clerk failed to file the rendition or provide a copy to the attorneys. Additionally, the judge contended that court staff failed to notify her of Kevin's subsequent efforts to obtain a ruling in the matter.

The *DuPont* Case

23. Judge Pratt presided over a divorce trial in the *DuPont* Case on February 4, 6, and 7, 2013. Judge Pratt did not immediately issue a ruling, announcing that she was taking the matter under advisement.
24. Throughout March 2013 and April 2013, the attorney representing Sandra DuPont began regularly communicating with Judge Pratt's court coordinator in an attempt to learn when Judge Pratt would be making her ruling in the case.
25. On May 15, 2013, Judge Pratt faxed a copy of a handwritten rendition, dated February 15, 2013, to Sandra's attorney.
26. The copy received by Sandra's attorney was not a file-stamped copy; however, the rendition that was imaged by the district clerk's office on or after May 15, 2013, showed a clerk's date stamp of February 15, 2013.
27. The February 15, 2013 date stamp included the initials "ME," indicating that it had been stamped by Marilyn Epps; however, according to Judge Pratt's testimony, Epps did not start working in her court until April 24, 2013.

28. Therefore, Epps could not have stamped the document on February 15th as indicated by the initials beside the date stamp.
29. In her testimony before the Commission, Judge Pratt denied that she instructed Epps to roll back the clerk's date stamp on the rendition in the *DuPont* Case to match the date of the judge's signature.
30. Judge Pratt testified that she signed the rendition on February 15th, and instructed court staff to file it and forward a copy to the attorneys of record; however, according to the judge's testimony, court staff failed to do so and failed to advise her of the parties' subsequent efforts to obtain a ruling.

The *Hernandez-Rivera* Case

31. On January 30 – 31, 2013, Judge Pratt presided over a hearing in the *Hernandez-Rivera* Case, which was pending in the 310th District Court; however, Judge Lisa Millard, the judge of the 310th District Court, was unavailable to hear the matter at that time.
32. At the conclusion of the hearing on January 31, 2013, Judge Pratt announced that she was taking the matter under advisement.
33. Thereafter, on an almost weekly basis, the attorney for Aaron Hernandez contacted Judge Pratt's court staff to find out if a ruling had been made. Each time he spoke to court staff, the attorney was told that Judge Pratt had not yet ruled.
34. On April 9, 2013, Aaron's attorney filed a Motion for Status Conference, which was set to be heard on April 18, 2013; however, Judge Pratt failed to appear for the hearing.
35. On May 24, 2013, the attorneys in the *Hernandez-Rivera* Case received a handwritten rendition from Judge Pratt dated January 30, 2013.
36. Although the rendition was not provided to the parties or entered into the computer docket until May 24, 2013, the document that was imaged by the District Clerk's office was date-stamped January 30th; however, there were no initials placed beside the date stamp indicating the identity of the clerk who processed the document.²
37. In July 2013, as a result of the nearly four month delay in receiving notice of Judge Pratt's ruling, and other substantive conflicts within the order itself, Judge Millard granted a new trial in the case.
38. In her testimony before the Commission, Judge Pratt stated that she signed the rendition in the *Hernandez-Rivera* Case after the hearing concluded on January 31, 2013; however, because she had not changed the date on her calendar from the previous day, she mistakenly stamped January 30th instead of January 31st as the date of entry.
39. No explanation was provided as to why the clerk's stamp also erroneously reflected January 30, 2013, or why the parties did not receive a copy of the rendition until May 24, 2013; however, Judge Pratt testified before the Commission that any delays in filing her rendition or providing a copy to the parties would have been the result of court clerk errors and incompetence.

² Marilyn Epps, who was Judge Pratt's lead clerk starting on April 24, 2013, would have been the person responsible for processing the judge's signed orders and renditions from that point forward.

The *Messier* Case

40. Luc and Katy Messier were granted a divorce in February 2011, which was appealed by Katy.
41. While the *Messier* Case was on appeal, Judge Pratt presided over several hearings involving various post-trial motions.
42. On June 26, 2012, Judge Pratt held a hearing on Katy's motion for judgment *nunc pro tunc*, but did not issue a ruling.
43. On December 19, 2012, Judge Pratt presided over an enforcement motion hearing after which she did issue an oral ruling from the bench, but did not reduce that ruling to writing indicating that the attorneys were to prepare proposed orders for her signature.
44. On March 25, 2013, the attorneys appeared in court for a hearing to enter orders regarding the enforcement motion; however, after waiting for more than an hour, the attorneys were advised by the court coordinator that Judge Pratt wanted the attorneys to leave the courtroom and that she would consider the matter on submission. The attorneys then left their proposed orders with the court coordinator for Judge Pratt to review.
45. Throughout March 2013 and April 2013, the attorneys for the Messiers continued to contact Judge Pratt's court coordinator asking if the judge had ruled.
46. During this time, the attorneys and the court coordinator inspected the court file, but only found the unsigned proposed orders.
47. The court coordinator advised the attorneys that there was no ruling and they would be notified as soon as one was issued.
48. In late May 2013, the attorneys received a handwritten rendition from Judge Pratt, dated March 25, 2013, with the judge's decision regarding the motion heard on June 26, 2012; however, the rendition had been date-stamped by Epps on May 25, 2013.
49. On June 5, 2013, the attorneys learned for the first time that Judge Pratt had signed the proposed order submitted by Katy's attorney, which was dated March 25, 2013.
50. The enforcement order purportedly was date-stamped and initialed by Epps on March 25, 2013, even though Epps did not start working in Judge Pratt's court until April 24, 2013.
51. The enforcement order was not entered into the computer docket by the District Clerk's office until June 4, 2013.
52. Because the attorneys did not receive notice of the March 25, 2013 judgment until June 5, 2013, Judge Pratt granted Luc Messier's motion to extend the post-judgment deadlines so that an appeal could be perfected.
53. On June 24, 2013, and again on July 18, 2013, Luc's appellate attorney requested that Judge Pratt issue findings of fact and conclusions of law in connection with the appeal.
54. On August 1, 2013, Katy's attorney filed proposed Findings of Fact and Conclusions of Law in the *Messier* Case.³

³ According to District Clerk's date stamp, this document was filed on August 13, 2013.

55. On August 29, 2013, Luc's appellate attorney filed a motion to abate the appeal due to the failure of Judge Pratt to issue the requested findings of fact and conclusions of law.
56. On September 12, 2013, the 14th Court of Appeals abated the appeal and ordered Judge Pratt to issue the requested findings of fact and conclusions of law.
57. The following day, Judge Pratt filed findings of fact and conclusions of law that were dated August 18, 2013; however, according to the District Clerk's computer docket entry, the document, which was not date stamped by a clerk, was signed on September 13, 2013.⁴
58. In a letter dated September 19, 2013, sent directly to the 14th Court of Appeals, Judge Pratt provided a chronology of events and confirmed that she signed the findings of fact and conclusions of law on August 18, 2013, which the judge pointed out was before the motion to abate was filed with the Court; however, no explanation was provided as to why Judge Pratt waited to provide this information until after the Court ordered her to issue the findings of fact.
59. On October 25, 2013, Luc's trial counsel filed a motion to recuse Judge Pratt from presiding over any other pending matters.
60. On February 27, 2014, a nine hour recusal hearing took place before a visiting judge. Judge Pratt was ordered removed from the *Messier* Case a few weeks later.
61. In her testimony before the Commission, Judge Pratt attributed any delays in filing her judgments, renditions, and findings of fact in the *Messier* Case to clerk errors and incompetence.
62. In support of her testimony regarding the alleged incompetence of the various court clerks assigned to her court, Judge Pratt provided the Commission with numerous emails dated from late September 2013 through January 2014, in which she complained to supervisors in the Harris County District Clerk's Office about the unusually high turnover rate of clerks assigned to her court, and that the clerks were not properly trained, could not locate court files and court records, and were generally negligent and derelict in their duties.
63. Judge Pratt provided no emails or records of other communications covering the period from May 2013 through September 2013 expressing concerns about the delays in filing orders, renditions, and findings of fact in the *Bates*, *DuPont*, *Hernandez-Rivera*, and *Messier* Cases, which were all handled by her lead clerk, Epps.
64. In one email, however, Judge Pratt acknowledged that she was ultimately responsible for the management and operations of the 311th District Court.
65. Witnesses who worked in the 311th District Court also confirmed that Judge Pratt was often late to court or did not show up at all, frequently cancelled or failed to appear at

⁴ The District Clerk's office later changed the computer docket entry to reflect that the document had been signed on August 18, 2013. The delayed disclosure of the Findings of Fact negatively impacted Luc Messier's rights to object to the Findings or ask for supplemental or additional findings. It also potentially harmed his position in the appeal; however, the 14th Court of Appeals granted his request to extend the deadlines due to the discrepancy between the date of the Findings of Fact and the date of its receipt by the parties and their attorneys.

preferential settings and scheduled hearings, and delayed signing orders in cases for months at a time. As a result, Judge Pratt had the highest backlog of pending cases than any other Harris County Family District Court.

66. According to witnesses in the Harris County District Clerk's Office, only experienced employees were assigned to serve as lead clerks in Judge Pratt's court and any delays in processing Judge Pratt's signed orders, renditions, and findings of fact were due to Judge Pratt's chronic failure to provide the documents to the clerks for processing.

DISMISSALS FOR WANT OF PROSECUTION

The *Montgomery* Case

67. On December 18, 2013, attorney Matthew Waldrop obtained an Order of Recusal removing Judge Pratt from eight cases, including the *Montgomery* Case, in which he was lead counsel.
68. On December 30, 2013, the *Montgomery* Case was assigned to Judge Sheri Dean in the 309th District Court.
69. Also on December 30, 2013, without notice or an opportunity to be heard, Judge Pratt signed an order dismissing the *Montgomery* Case for want of prosecution.
70. On January 3, 2014, Judge Dean signed an order vacating and setting aside the dismissal order as void, and the case was reinstated on the 309th District Court docket.
71. In her testimony before the Commission, Judge Pratt acknowledged signing the order of dismissal in the *Montgomery* Case after she had been recused from the matter, but claimed that she did so because she had been advised that this was the mechanism for removing the case from the 311th District Court's docket. Judge Pratt indicated that she was not aware that her order actually dismissed the entire *Montgomery* Case.

The *Canepa* Case

72. On May 18, 2012, Tanya Sampson Canepa filed for divorce from her husband, Francisco Javier Canepa.
73. After numerous delays, Judge Pratt conducted a trial on October 25, 2013.
74. After several hours of testimony, Judge Pratt recessed for the day and ordered the parties to return to resume testimony on October 29, 2013.
75. On October 29, 2013, all parties, attorneys and witnesses appeared as ordered to resume the trial only to learn that Judge Pratt had recused herself from the case.
76. Thereafter, the *Canepa* Case was assigned to the 257th District Court and a new trial date was set for May 21, 2014.
77. On December 30, 2013, without notice or an opportunity to be heard, Judge Pratt signed an order dismissing the *Canepa* Case for want of prosecution.
78. In her testimony before the Commission, Judge Pratt acknowledged signing the order of dismissal in the *Canepa* Case after she had been recused from the matter, but claimed that she did so because she had been advised that this was the mechanism for removing a

case from the 311th District Court's docket. Judge Pratt indicated that she was not aware that her order actually dismissed the entire *Canepa* Case.

79. The *Canepa* Case was reinstated on April 1, 2014.
80. On December 30-31, 2013, without notice or an opportunity to be heard, Judge Pratt signed orders dismissing approximately 600 cases for want of prosecution.
81. Many of the cases had remained active on the court's docket right up to the date of dismissal.⁵ Some had already been tried or mediated and were simply awaiting Judge Pratt's signature on the final orders; others were set for trial in 2014; and some had already been transferred to other courts following Judge Pratt's recusal as described above.
82. In addition to the cases described above, one of the active cases dismissed by Judge Pratt for want of prosecution was the *Corvera* Case, which had been tried in Associate Judge Robert Newey's court on December 18, 2013.
83. During the trial, Judge Newey determined that an amicus attorney needed to be appointed per court policy because issues of child custody had been raised.
84. Judge Newey recessed the trial and ordered the attorneys to prepare an order for the appointment of an amicus attorney and obtain a new trial date from the court coordinator.
85. That same day, the attorneys prepared an order for the amicus attorney appointment, which required Judge Pratt's signature, and secured a new trial date from the court coordinator.
86. The attorneys then left the proposed order with the court clerk to be presented to Judge Pratt for her signature and the selection of the amicus attorney.
87. Approximately one hour after leaving the courthouse on December 18, 2013, the attorneys were notified by Judge Newey that Judge Pratt had dismissed the *Corvera* Case for want of prosecution.
88. According to the attorneys in the *Corvera* Case, they received no notice and were afforded no opportunity to be heard before Judge Pratt dismissed the case.
89. A motion to reinstate the *Corvera* Case was granted on January 14, 2014. Thereafter, in March 2014, a motion to recuse was granted removing Judge Pratt from the case.
90. In the *Heck* Case, the parties reached an agreement through mediation in August 2013 and filed their agreed judgment with the 311th District Court on December 6, 2013.
91. On January 13, 2014, the parties filed a motion for hearing on the final orders.
92. A few weeks later, the parties were notified that Judge Pratt had signed an order dismissing the *Heck* Case for want of prosecution on December 31, 2013.
93. On March 12, 2014, the *Heck* Case was reinstated following a motion by the parties.

⁵ According to media reports, Judge David Farr, the local presiding judge for the Harris County Family Law Courts, told reporters that there were at least 260 active cases dismissed for want of prosecution by Judge Pratt in the last days of 2013. Approximately 230 of these cases were reinstated before Judge Pratt resigned on March 28, 2014.

94. Shortly thereafter, another judge signed the agreed order that had been submitted to Judge Pratt on December 6, 2013.
95. The parties in the *Copeland* Case began arbitration on October 29, 2013. The arbitration concluded on December 10, 2013, and the arbitrator issued the Arbitration Decision and Award on December 20, 2013.
96. On December 23, 2013, one of the attorneys in the *Copeland* Case filed an Application to Confirm Arbitration and Award in the 311th District Court.
97. On December 30, 2013, while the Application was pending with the court, Judge Pratt signed an order dismissing the *Copeland* case for want of prosecution.
98. On January 14, 2014, the *Copeland* Case was reinstated upon motion by the parties.
99. According to an attorney with the Texas Department of Family and Protective Services (“CPS”), who prosecuted CPS cases assigned to the 311th District Court, Judge Pratt dismissed approximately thirty (30) CPS cases for want of prosecution on December 30-31, 2013. CPS attorneys received no notice and no opportunity to be heard regarding the dismissal of any of these cases.
100. According to witnesses, Judge Pratt’s dismissal of hundreds of active cases on December 30-31, 2013, required other judges and their staff to expend considerable time and resources, at taxpayers’ expense, to locate signed orders that had not been provided to clerks for processing and motions to reinstate that had been filed electronically but not handled by Judge Pratt before she left office. They also tried to notify affected parties who may not have received notice that their cases had been dismissed and attempted to reinstate cases before the courts lost jurisdiction.
101. Witnesses also stated that Judge Pratt’s dismissal of active cases created emotional and financial hardships for many parties. In numerous cases, parties incurred the additional expense of having their attorneys prepare motions to reinstate and appear in court to have their motions heard. In some cases, parties took advantage of the dismissals by depleting community assets and forcing themselves back into the marital home.
102. Witnesses raised concerns that parties who were not represented by attorneys would be particularly disadvantaged if they did not receive notice of the dismissal of their cases, did not know how to have their cases reinstated, or missed the deadline for requesting reinstatement.
103. Witnesses also reported that in at least one case, Judge Pratt signed an order dismissing the case and signed a final judgment in the case on the same date, forcing the parties to resolve the conflict in court at their own expense.
104. When asked to describe the process used to determine which cases to dismiss for want of prosecution, Judge Pratt testified that she had instructed court staff to provide her with a list of cases that were a year old or older.
105. Judge Pratt testified that she checked the status of some, but not all, of the cases, and relied on her memory in eliminating some active cases from the list.
106. Ultimately, Judge Pratt signed orders of dismissal in approximately 600 cases based on the list provided to her by court staff.

107. Judge Pratt acknowledged that parties and/or their attorneys were not provided with a separate notice of the court's intent to dismiss; however, she maintained that, in the months leading up to the signing of the dismissal orders, a notice of trial setting had been sent out to the parties or their attorneys in every case.
108. Judge Pratt went on to explain that the front and back of the notice of trial setting contained a warning that the case was subject to dismissal if certain conditions were not met. The notices also stated that cases pending more than 5 months without a trial setting would be set for a dismissal for want of prosecution ("DWOP") hearing.
109. Judge Pratt also represented that she held numerous DWOP hearings throughout the last five months of 2013, and that she simply waited until December 30-31, 2013 to sign the stack of dismissal orders provided to her by court staff, who assured her that DWOP notices had gone out as required.
110. A review of several dismissal orders provided to the Commission indicated that none of the orders included the date of the DWOP hearing, which was left blank.

RELEVANT STANDARDS

1. Article V, §1-a(6)A of the Texas Constitution provides that any judge may be disciplined for willful or persistent violation of the rules promulgated by the Supreme Court of Texas, willful violation of the Code of Judicial Conduct, incompetence in performing the duties of office, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Section 33.001(b) of the Texas Government Code, provides that a willful, persistent, and unjustifiable failure to timely execute the business of the court constitutes "willful or persistent conduct that is clearly inconsistent with the proper performance of the judge's duties."
3. Canon 2A of the Texas Code of Judicial Conduct provides that, "A judge shall comply with the law..."
4. Canon 3B(2) of the Texas Code of Judicial Conduct provides that, "A judge shall maintain professional competence in [the law]."
5. Canon 3B(8) of the Texas Code of Judicial Conduct provides that, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."
7. Rule 165a of the Texas Code of Civil Procedure provides that before a case can be dismissed for want of prosecution, "notice of the court's intention to dismiss and the date and place of the dismissal hearing shall be sent by the clerk to each attorney of record, and to each party not represented by an attorney..."

CONCLUSIONS

The Commission concludes from the evidence presented that Judge Pratt failed to be diligent and failed to timely execute the business of the court in violation of Article V, section 1-a(6)A of the Texas Constitution. Specifically, with regard to the delays in the *Bates*, *DuPont*,

Hernandez-Rivera, and *Messier* Cases, although it is possible that Judge Pratt signed the various renditions, orders, and findings of fact on the dates noted beside her signature, the probability that this occurred appears remote given the totality of the circumstances. Judge Pratt's reputation for not showing up for court, not signing orders for months at a time, not disposing of cases in a timely manner, and having the largest backlog of pending cases of all the Harris County Family District Courts was supported by witnesses who appeared in the 311th District Court or worked with the judge on a regular basis and supports the conclusion that Judge Pratt simply failed to sign orders, renditions, and findings of fact in a timely manner. Compounding the problem was the fact that when the delays were initially brought to her attention, Judge Pratt took no action; however, when the 14th Court of Appeals became involved, Judge Pratt was suddenly able to produce the missing documents which she claimed to have signed months earlier.

The Commission does not accept Judge Pratt's contention that incompetent and untrained clerks were responsible for the delays in processing her orders and providing them to the parties, especially given the fact that Marilyn Epps, the clerk responsible for handling the orders, renditions, and findings of fact in the *Bates*, *DuPont*, *Hernandez-Rivera*, and *Messier* Cases, was a well-trained clerk with twenty-five years of experience. The evidence provided to the Commission demonstrated that Epps could not have received orders dated January 30, 2013, February 15, 2013, or March 25, 2013, until after she started working in Judge Pratt's court on April 24, 2013. As lead clerk, Epps would have processed the orders when she received them from Judge Pratt, which means that the judge was responsible for the delays. This conclusion is reinforced by the fact that following the May 15, 2013 order from the 14th Court of Appeals, Judge Pratt took no steps to ensure that her decisions were timely processed and provided to the parties, and continued to delay the signing of orders.

Based on the evidence before it, the Commission concludes that Judge Pratt did not issue the orders, renditions, and findings of fact in the *Bates*, *DuPont*, *Hernandez-Rivera*, and *Messier* Cases until the documents were finally provided to the parties. In light of this, the decisional delays in those cases were unreasonable and unjustified. The Commission notes that Judge Pratt provided no evidence that these cases involved particularly complex legal issues; however, it was evident that Judge Pratt was carrying a particularly heavy caseload, and a very large backlog, due to her own lack of diligence and neglect of her duties. Excluding the fact that Judge Pratt was frequently late to court and often missed or canceled court hearings and trials, there does not appear to be a legitimate justification for the pattern of delayed decision-making that occurred during the last years of Judge Pratt's tenure on the bench.

The Commission notes that the failure of a judge to promptly dispose of the business of the court in the absence of a justifiable reason for the delay reflects adversely on the entire judicial system. Prompt disposition of cases is critical to the parties appearing in court, especially when vulnerable children are involved, and necessary to prevent backlogs that interfere with the administration of justice. A judge who fails to show up for court hearings, appears late to court, or delays making decisions and signing orders in cases involving the rights of parents and the best interests of children, causes harm and a great disservice to parties, lawyers, witnesses, jurors, and other judges. A judge's unjustified decisional delays, tardiness, and absenteeism are harmful to the parties, damage the public's respect for and trust in the judiciary, and cannot be condoned.

With regard to the dismissal of more than 600 cases on December 30-31, 2013, the evidence shows that in most if not all instances, DWOP notices had not been sent to the parties or their attorneys and that DWOP hearings had not been held in violation of Rule 165a of the Texas Code of Civil Procedure. It was also clear to the Commission that Judge Pratt failed to take appropriate measures to ensure that active cases awaiting trial or the judge's signature on final orders were not included in the list of cases to be dismissed and that cases from which she had already been recused were not included on the list. Finally, if Judge Pratt's explanation is credible for why she signed DWOP orders in the cases from which she had been recused, and that she did so only to close the cases out of her court's docket and not with the intent to dismiss the entire case, then Judge Pratt demonstrated great incompetence in the performance of her duties. The Commission concludes that Judge Pratt's conduct in dismissing active cases for want of prosecution, including cases from which she was recused, violated Canons 2A, 3B(2), and 3B(8) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.

In condemnation of the above-recited conduct that violated Article V, §1-a (6) A of the Texas Constitution, and Canons 2A, 3B (2), and 3B (8) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND** to the Honorable Denise V. Pratt, Former Judge of the 311th Judicial District Court, Houston, Harris County, Texas.

Pursuant to the authority contained in Article V, §1-a (8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 4th day of September 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



BEFORE THE STATE COMMISSION ON JUDICIAL CONDUCT

CJC Nos. 11-1106-CC, 13-0083-CC, 13-0093-CC, 13-0097-CC, 13-0147-CC, 13-0152-CC, 13-0383-CC, 13-0410-CC, 13-0458-CC, 13-0460-CC, 13-0557-CC, 13-0670-CC

PUBLIC REPRIMAND

**HONORABLE CHRISTOPHER DUPUY
FORMER JUDGE, COUNTY COURT AT LAW NO. 3
GALVESTON, GALVESTON COUNTY, TEXAS**

During its meeting on October 15-16, 2014, the State Commission on Judicial Conduct concluded a review of the allegations against the Honorable Christopher Dupuy, former Judge of the County Court at Law No. 3, Galveston, Galveston County, Texas. Former Judge Dupuy was advised by letter of the Commission's concerns. At his request, a hearing was scheduled to provide the former judge with an opportunity to appear before the Commission and provide testimony. Although Former Judge Dupuy was notified of the date, time, and location of the hearing, he failed to appear.

BACKGROUND

Judge Dupuy was elected to the Galveston County Court at Law No. 3 bench in November 2010, after defeating the incumbent judge who had been presiding over Judge Dupuy's divorce from Adrienne Viterna, and the couple's child custody case. As of January 1, 2011, when he was sworn in, Judge Dupuy was defending himself in a legal malpractice case, had already been the subject of public discipline by the State Bar of Texas, was defending himself from post-judgment collection efforts in another malpractice action as well as from a sanction for filing a frivolous lawsuit against his ex-wife's attorney, and had filed for bankruptcy protection. Within two years, Judge Dupuy would again be publicly sanctioned by the State Bar of Texas, sued by his uncle for failure to repay a \$25,000 loan, sued by another former client for legal malpractice, sued by his ex-wife to modify a 2010 arbitrated child custody order, and would file for bankruptcy protection a second time, which stayed the pending litigation and post-judgment collection efforts against him until December 2012.

Starting in August 2011, the Commission received complaints from lawyers and litigants appearing in Judge Dupuy's court who alleged that the judge failed to recuse from cases involving an

attorney with whom he had a special, close relationship, failed to follow proper procedures when asked to recuse, and threatened and retaliated against attorneys and their clients who asked for his recusal and/or who represented his ex-wife, Viterna, in pending litigation against the judge.

After Judge Dupuy sent an email to Galveston County public officials and attorneys misrepresenting information he had obtained from the Commission in his quest to have Associate Judge Suzanne Schwab-Radcliffe disqualified from representing family law clients in Galveston County, the Commission asked Judge Dupuy to appear before it and answer questions relating to the pending complaints. Judge Dupuy appeared before the Commission in December 2012, and provided testimony.

In the months that followed, the Commission dismissed some of the pending complaints based on insufficient evidence, but notified the judge in writing and through his attorney that several of the complaints remained pending. In addition, after learning that Judge Dupuy was misrepresenting to the public that the Commission had dismissed all of the complaints pending against him, the Commission again contacted the judge through his attorney to caution against making misleading statements concerning the status of the pending complaints and advised that additional complaints had since been filed against him requiring his response.

On May 21, 2013, Judge Dupuy was indicted on eight counts involving accusations that he mistreated and retaliated against one of his ex-wife's attorneys, Lori Laird; mistreated and retaliated against attorney Greg Enos; mistreated and retaliated against Associate Judge Suzanne Radcliffe; and misused government property for the private benefit of his girlfriend, Tara Compton.¹ The following day, the Texas Attorney General filed a civil removal action against Judge Dupuy in Galveston County. On May 24, 2013, the Commission suspended Judge Dupuy from office without pay as a result of the indictments. On June 11, 2013, Judge Dupuy was indicted for Abuse of Official Capacity for having engaged in the practice of law while a judge in order to assist Compton. Judge Dupuy appeared before the Commission on June 14, 2013 to appeal the suspension, but did not prevail. On July 30, 2013, Judge Dupuy was indicted on two counts of aggravated perjury relating to his testimony in a protective order hearing before a visiting judge in June 2013. Thereafter, all but the two aggravated perjury charges and two misdemeanor abuse of official capacity charges were dismissed by Harris County District Judge Ryan Patrick, sitting by assignment in Galveston County in connection with the criminal case against Judge Dupuy.

Also in June of 2013, Judge Dupuy temporarily lost custody of his two children during an emergency protective order hearing after his ex-wife claimed that Judge Dupuy was plotting to have her murdered, stage his own death in a boating accident, and flee with their children to New Zealand. Although his former fiancée, Tara Compton, provided prosecutors with an affidavit detailing the plot and provided some testimony at the protective order hearing in support of the affidavit, Judge Dupuy denied the allegations under oath. A protective order was not issued.

On August 28, 2013, Judge Patrick held Judge Dupuy in criminal contempt of court for violating a July 25, 2013 order prohibiting the participants in the criminal case from discussing the matter publicly, including on the internet and through social media. The finding of contempt was based on evidence submitted to the court showing that Judge Dupuy had been posting long rants on his Facebook page criticizing and personally attacking David Glickler, the Assistant Attorney General prosecuting his case. Judge Dupuy was sentenced to serve 45 days in jail and ordered to undergo a psychiatric evaluation to determine if he was competent to stand trial.

¹ Pursuant to Sec. 25.00161 of the Texas Government Code, "[t]he regular judge of a statutory county court shall diligently discharge the duties of the office on a full-time basis and may not engage in the private practice of law."

On September 19, 2013, prior to submitting to the psychiatric evaluation, Judge Dupuy entered into an agreement with the prosecutor resulting in a plea of guilty to misdemeanor charges of perjury and abuse of office, and the judge's immediate resignation from the bench. Judge Dupuy was placed on two years' probation and agreed not to run for elected office during that time. The remaining criminal charges were dismissed.

During sentencing, Judge Patrick addressed Judge Dupuy and stated, "You brought an incredible dishonor to yourself, your name and this profession...Anybody who reads or knows about this case makes our job as judges harder because of what you did." Judge Patrick added, "You put yourself in this position...You just added one more reason we've all become the butt of jokes, particularly here in Galveston." The judge's criminal cases, suspension from office, child custody case, civil removal case, contempt of court sentence, plea and resignation were all the subject of extensive media coverage, as well as blogs, YouTube videos, and posts on various social media sites.

At the time of Judge Dupuy's guilty plea and resignation from office, the above-referenced complaints remained pending with the Commission. The investigation into these matters was concluded and the cases were presented to the Commission at its August 13-15, 2014 meeting. After considering the evidence before it, the Commission entered the following Findings and Conclusions.

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Christopher Dupuy was Judge of County Court at Law No. 3, in Galveston, Galveston County, Texas.

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2. Attorney Greg Hughes represented a father, Bryan Dean, in Case No. 07FD0090, styled *In the Interest of A.D. and P.D., Minor Children* (the "Dean Case.") In that case, the mother had filed a Motion to Modify asking to be allowed to relocate to the San Antonio area with the couple's children.
3. On May 25, 2011, Hughes filed an answer in the case, placing the court and opposing counsel on notice that he was representing Bryan in the matter.
4. The mother was represented by attorney Kathleen Collins, who, unbeknownst to Hughes or his client, approached Judge Dupuy on June 15, 2011, and obtained an *ex parte* temporary restraining order against Bryan preventing him from taking the children on a Hawaiian vacation with his partner.
5. Hughes first learned that a TRO had been issued against Bryan on June 21, 2011, when he received a letter from Collins advising him that his client was in violation of the order.
6. Prior to the show cause hearing regarding Bryan's alleged violation of the *ex parte* TRO, Hughes filed a motion to recuse Judge Dupuy.
7. According to the motion to recuse, Judge Dupuy had an especially close relationship with Collins, including an attorney-client relationship, which he failed to disclose.
8. Judge Dupuy announced at the commencement of the show cause hearing that he was denying the motion to recuse because it had "absolutely no basis, either in fact or in law;" however, the judge stated that he would refer the matter to the Presiding Judge of the Second Administrative Judicial Region for consideration.

9. Judge Dupuy then went forward with the show cause hearing and attempted to extend the TRO, which was set to expire that day.
10. When Hughes objected that Judge Dupuy could not act until the motion to recuse had been resolved, Judge Dupuy became visibly angry and threatened Bryan with future punishment if he violated the TRO.
11. On August 3, 2011, Presiding Judge Olen Underwood held a recusal hearing in the *Dean* Case.
12. At the recusal hearing, witnesses, including Judge Dupuy's ex-wife, Adrienne Viterna, testified about the nature of Judge Dupuy's relationship with Collins.
13. Judge Underwood granted Hughes' motion and recused Judge Dupuy from the *Dean* Case.
14. The following day, Judge Dupuy made a threatening telephone call to Hughes in which the judge expressed his anger that Hughes had called his ex-wife to testify and promised Hughes that when he appeared in Judge Dupuy's court again, the judge "would remember" what a sleaze Hughes was.
15. In late November 2011, Hughes filed a motion to recuse against Judge Dupuy in Case No. 11FD0574, styled *In the Interest of H.E.P., a Minor Child* (the "*Powers* Case.") In that case, Hughes represented the father, Chad Powers.
16. According to the motion to recuse, Judge Dupuy and the child's mother, Amanda Taber, were "Facebook" friends, who exchanged numerous *ex parte* communications during the pendency of the case through various "Facebook" posts.
17. Additionally, Hughes disclosed in the motion to recuse that he was now representing Adrienne Viterna in a custody dispute against Judge Dupuy.
18. Judge Dupuy recused himself from the *Powers* Case, as well as from subsequent cases in which Hughes was the attorney of record.
19. On August 29, 2012, a respondent, Jimmy Cox, appeared before Judge Dupuy for an enforcement hearing.
20. The day before the hearing, Cox hired Hughes to represent him and Hughes filed an answer and a motion to recuse Judge Dupuy from presiding over the enforcement action.²
21. When Judge Dupuy entered the courtroom, he called out Hughes' name and "excused" him from the courtroom, refusing to allow him to represent Cox in the enforcement action.
22. After Hughes was forcibly escorted out of the courtroom by the bailiff, Cox advised Judge Dupuy that he had hired Hughes to represent him in the enforcement action. Judge Dupuy then advised Cox to fire Hughes and get his money back.
23. Hughes also provided documentation to the Commission demonstrating that, while a judge, Judge Dupuy engaged in a pattern of intentional discovery abuse and filed numerous frivolous motions designed to delay the prosecution of a legal malpractice case³ filed against Judge Dupuy by a former client, Mr. Margarita, LP.

² Judge Dupuy had previously been recused from presiding over Cox's family law case; however, the enforcement action was treated as a separate matter.

³ Kathleen Collins represented Judge Dupuy in this malpractice case, which was filed in 2009 and remains pending today.

24. In January 2012, Judge Dupuy and Collins were sanctioned by a visiting judge and ordered to pay \$7,500 to David Bryant, the attorney representing Mr. Margarita, LP, for their efforts to delay the case by filing frivolous motions to recuse and failing to appear for several scheduled depositions.
25. Hughes also provided documentation that demonstrated that, while a judge, Judge Dupuy engaged in a similar pattern of conduct while a defendant in another malpractice action filed against him in 2009 by Cindi Mayville.
26. In the *Mayville* Case, Judge Dupuy engaged in post-judgment discovery abuses, filed multiple motions to have the various judges involved in the case recused, and filed for bankruptcy protection⁴ to delay action in the *Mayville*, *Mr. Margarita*, and several other cases pending against him.

13-0093-CC & 13-0147-CC

27. Until February 2013, Suzanne Schwab-Radcliffe had been the part-time Associate Judge for the 306th District Court in Galveston County for 14 years. She also maintained a private law practice during this time and shared office space with attorney Lori Laird.
28. Per a standing policy promulgated by the 306th District Court and the County Courts at Law in Galveston County, all cases assigned to the 306th District Court in which Radcliffe was the attorney of record were automatically transferred to one of the three County Courts at Law.
29. This policy, which had been in effect for more than ten years, also applied to “any partners and associates which she (Radcliffe) may have from time to time.” Due to her close association with Radcliffe, cases involving Laird as an attorney were also transferred out of the 306th District Court.
30. On July 6, 2012, Laird was hired to handle a modification in Case No. 02-FD-0367, *In the Interest of A.E.W. and B.A.W., Minor Children* (the “Wingate Case”), a family law case pending in the 306th District Court. Pursuant to county policy, the case was transferred to Judge Dupuy’s court.
31. However, on August 20, 2012, opposing counsel in the case, Greg Enos, filed a motion to disqualify Laird, complaining that the county policy to automatically transfer cases out of the 306th District Court involving Laird or Radcliffe permitted litigants to “forum shop” by hiring either one of these attorneys to handle their cases.
32. On September 6, 2012, following a hearing, Judge Dupuy disqualified Laird from the *Wingate* case, ordered her to refund her client’s money, and transferred the matter back to the 306th District Court.
33. At the hearing, Laird objected that Judge Dupuy had prepared the 4-page disqualification order prior to the commencement of the hearing and had made his decision before hearing any evidence.
34. According to Laird, Judge Dupuy was improperly influenced in his decision by a personal relationship with Enos, as evidenced by the fact that Judge Dupuy had dated Enos’ daughter,

⁴ This was Judge Dupuy’s second bankruptcy filing, which was dismissed on December 6, 2012. Since that time, he has filed for bankruptcy on two more occasions, and each has been dismissed.

played poker and socialized with Enos, and had appeared at a party with Enos the very evening of the September 6, 2012 hearing.⁵

35. On September 14, 2012, Judge Janis Yarbrough of the 306th District Court vacated Judge Dupuy's entire order, save the transfer of the *Wingate* Case to Judge Yarbrough's court.
36. Additionally, Judge Yarbrough informed Judge Dupuy in an email, "Attached is the order that I signed this morning. As this case is no longer in your court, please do not interfere with the operations of the 306th."
37. On October 3, 2012, Judge Dupuy issued an "Order Disqualifying Suzanne Radcliffe" in Case Number 12-FD-2386, *In the Matter of the Marriage of Cory L. Tucker and Jessica L. Tucker*, as well as in two other cases.
38. In his order, Judge Dupuy contended that Radcliffe's dual roles as an Associate Judge and as a family law attorney created a "clear conflict of interest."⁶
39. Two of the disqualification orders, which were issued on the judge's own motion and without a hearing, were issued in cases wherein Radcliffe had filed motions to recuse Judge Dupuy.
40. Judge Dupuy did not forward the recusal motions to the Presiding Judge of the Second Administrative Judicial Region; instead, on October 10, 2012, Judge Dupuy entered an "Order Striking Disqualified Attorney's Motion and Finding the Associate Judge, Suzanne Schwab-Radcliffe, in Contempt" in each case in which Radcliffe had filed a motion to recuse.
41. Judge Dupuy's orders of contempt against Radcliffe, which did not include jail time or payment of a fine, cautioned that "any further contemptuous acts of the Associate Judge, including her disruption of inactive or active cases, or the filing of impermissible, unprofessional pleadings, may subject her to sanctions."
42. On or about November 29, 2012, Laird was retained as co-counsel to represent Judge Dupuy's ex-wife, Adrienne Viterna, in an ongoing child custody dispute involving the couple's young children.⁷
43. Soon thereafter, Laird sent a notice to Judge Dupuy's attorney requiring him to appear in Laird's office for his deposition.
44. On December 21, 2012, Judge Dupuy's orders disqualifying Radcliffe were overturned on appeal.⁸

⁵ Enos had also served as the mediator and the arbitrator in Judge Dupuy's 2010 divorce from Adrienne Viterna, wherein Enos awarded primary custody of the children to Judge Dupuy.

⁶ In a September 17, 2012 email to the Chief Deputy District Clerk and the head of the County Legal Department, Judge Dupuy accused Judge Yarbrough, Judge Radcliffe, and Laird of engaging in corrupt and unlawful conduct.

⁷ Among other things, Viterna was attempting to have the 2010 arbitration award giving Judge Dupuy full custody of their children overturned through a Bill of Review.

⁸ However, without advising them that the issue was being litigated in the courts, Judge Dupuy sent his conflict of interest concerns to the State Bar of Texas' Judicial Ethics Advisory Committee seeking an advisory opinion. In January 2013, the Committee issued Opinion No. 296, stating that a part-time family law associate judge, appointed by a court, could not ethically represent family law clients before any of the other courts in that county, or in counties surrounding that county, if those courts are subject to appellate jurisdiction of the court which he or she serves. In response to the opinion, Radcliffe immediately resigned her position as Associate Judge for the 306th District Court.

45. In its decision granting mandamus relief to Radcliffe, the First Court of Appeals ruled that Judge Dupuy had abused his discretion when he disqualified Radcliffe from representing clients in family law cases in the County Court at Law No. 3 because he failed to provide Radcliffe or her clients with notice, a hearing, or any other basic due process requirements.
46. For the same reasons, the First Court of Appeals also found that Judge Dupuy abused his discretion by finding Radcliffe in contempt of court for violating his disqualification orders.
47. On December 28, 2012, after a judge denied his motion to quash the deposition, a visibly angry Judge Dupuy appeared at Laird's office without his attorney, refused to answer questions, and read a prepared statement to the court reporter as to why he could not be deposed.
48. That same day, Judge Dupuy signed an order entitled, "Order and Notice of Charge of Criminal Contempt and Request for Judge to be Appointed to Determine Lori Laird's Guilt or Innocence and to Determine Punishment," holding Laird in contempt of court in the *Wishart* Case, from which Judge Dupuy had purportedly recused himself in November 2012.⁹
49. In the 8-page Order, Judge Dupuy sought to punish Laird for out-of-court statements made on Facebook, Twitter, YouTube, and a website she created to disseminate comments about Judge Dupuy.
50. The Order included the recommended sanction of a \$500 fine for each violation, incarceration in the County Jail for a term not to exceed 180 days, 50 hours of Continuing Legal Education in the field of Ethics, and the indefinite suspension of Laird's law license.
51. On January 31, 2013, Judge Dupuy signed a "Show Cause Order" in the *Wishart* and *Crowson* Cases and ordered Laird to appear before him to determine if she had committed contempt.
52. On February 11, 2013, Judge Dupuy presided over the contempt hearing against Laird and, over her objections, attempted to force her to "explain, defend or apologize" for each of the 37 counts of contempt that Judge Dupuy had entered against her.
53. On February 12, 2013, Judge Dupuy entered another Order holding Laird in criminal contempt in the *Crowson* Case, assessing a \$250 fine for each count and ordering Laird's confinement in the County Jail for 110 days. Judge Dupuy then released Laird on her own recognizance "pending appeal in any subsequent guilt/innocence hearing."
54. After entering his decision in the *Crowson* Case, Judge Dupuy called the *Wishart* Case and attempted to have Laird respond to the contempt findings in that matter. Judge Dupuy then entered the same Order holding Laird in contempt of court in the *Wishart* Case.
55. Although Judge Dupuy's court reporter, Lisa Fort, had been subpoenaed to appear and testify at the *Crowson* contempt hearing, Judge Dupuy granted Fort's Motion for Protective Order releasing her from the subpoena and scheduled a hearing for February 28, 2013, to determine if "sanctions are appropriate for the filing of the subpoenas served on Ms. Fort."¹⁰

⁹ On January 16, 2013, Judge Dupuy entered a similar order against Laird in the *Crowson* Case, in which she had also filed a motion to recuse. Prior to this, on October 11, 2012, Judge Dupuy had issued an "Order Striking Motion to Recuse and Finding Lori Laird in Contempt of Court." Both of these orders were issued without notice or hearing.

¹⁰ Fort had previously been subpoenaed to testify at a November 14, 2012 recusal hearing in the *Wishart* Case, based on a rumor that Judge Dupuy and Fort were engaged in, or had been engaged in, an intimate relationship. According to Laird, upon learning that Fort had been subpoenaed to testify in the *Wishart* recusal hearing, Judge Dupuy contacted Presiding Judge Olen Underwood and agreed to voluntarily recuse himself. Judge Underwood canceled the hearing based on Judge

56. On February 12, 2013, following the contempt of court hearing in Judge Dupuy's court, the hearings on Laird's motions to recuse Judge Dupuy from the *Crowson* and *Wishart* Cases were held by visiting judge Sharolyn Wood.
57. After Judge Wood refused to grant Lisa Fort's Motion for Protective Order, indicating that she would have to testify, Judge Dupuy signed orders voluntarily recusing himself from the *Crowson* and *Wishart* Cases.¹¹
58. Thereafter, at Laird's request, Judge Olen Underwood scheduled a *de novo* contempt hearing for April 10, 2013.
59. Without authority, Judge Dupuy appointed a Houston attorney, S. Gardner Eastland, to serve as the prosecuting attorney in the contempt proceedings, and thereafter sought a continuance in the case.
60. Judge Underwood granted the continuance and rescheduled the contempt hearings to June 4, 2013.¹²
61. As a result of Judge Dupuy's actions against her, Laird filed a criminal complaint against the judge with the Galveston County District Attorney's Office, which referred the matter to the Texas Attorney General's Office.
62. Following his indictments and as part of his plea agreement with the State, Judge Dupuy made a voluntary statement admitting guilt in connection with his treatment of Laird.
63. Specifically, Judge Dupuy stated,

"I, Christopher Michael Dupuy, am under indictment in Cause No. 13-CR-1366 for official oppression of Lori Laird. I hereby admit and confess that on or about February 12, 2013, I did then and there intentionally subject Lori Laird to mistreatment, that I knew was unlawful, and that I was then and there acting under the color of my office as Judge, Galveston County Court-at-Law No. 3."
64. On several dates between May 22 – June 18, 2013, an emergency hearing was held before a visiting judge upon the application by Viterna for a protective order and temporary orders pertaining to the custody of the Dupuy children.
65. In connection with the protective order hearing, Judge Dupuy's former fiancée, Tara Compton, provided an affidavit in which she described an alleged plot by Judge Dupuy to have Adrienne Viterna killed, and then fake his death and flee to New Zealand with his children.
66. In her affidavit and in statements to law enforcement, Compton stated that Judge Dupuy told her that he had purchased a gun and a silencer; had shown her the gun; and had shown her a picture of the silencer he had purchased for the gun. She also stated that she thought the murder plot was real and that Judge Dupuy posed a danger to Viterna and their children.

Dupuy's representation that he would sign an order of recusal; however, Judge Underwood rescheduled the recusal hearing after Judge Dupuy failed to sign a recusal order as promised.

¹¹ Previously, Judge Dupuy had signed several orders and amended orders regarding the pending recusal motions in the *Crowson* and *Wishart* cases, but none explicitly stated that Judge Dupuy had recused himself, which caused undue confusion, uncertainty, and delay.

¹² The *de novo* contempt hearing never took place due to Judge Dupuy's indictment, suspension from office, and subsequent guilty plea to abuse of office and perjury.

- 67. At the hearing held on May 28, 2013, Compton testified in support of the affidavit; however, when called back as a witness in the days that followed, Compton changed some of her testimony and, at one point, refused to answer questions asserting her Fifth Amendment right against self-incrimination.
- 68. When questioned on the stand on June 6, 2013, about whether he had purchased a silencer, Judge Dupuy denied the allegation and testified several times that he had not purchased a silencer.
- 69. On June 18, 2013, Viterna's application for protective order was denied.
- 70. Thereafter, Judge Dupuy's then-fiancée, Courtney Nixon, provided Laird with documents, including receipts, evidencing that Judge Dupuy had in fact purchased a silencer on February 16, 2013.¹³

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- 71. In 2012, Judge Dupuy was dating Tara Compton, a respondent in a child custody case pending in the 306th District Court.
- 72. On or about November 29, 2012, Associate Judge Radcliffe disqualified Compton's attorney from representing her in the case.
- 73. On December 6, 2012, Judge Radcliffe restricted Compton's access and visitation with her 8-year-old daughter.
- 74. Attorney Greg Enos represented the child's father, Greg Russell.
- 75. On December 19, 2012, Enos started receiving pleadings and motions that purported to be from Compton, acting *pro se*; however, the documents, which included motions to recuse Judge Yarbrough and Judge Radcliffe, arrived via fax from Judge Dupuy and appeared to have been prepared by him.
- 76. In fact, evidence confirmed that Judge Dupuy had sent the motions from the fax machine in his chambers during regular court business hours.
- 77. Russell noted that in addition to Judge Dupuy's preparation of pleadings and other legal documents on Compton's behalf, the judge further assisted Compton by contacting and attempting to interview potential witnesses in the case.
- 78. On December 27, 2012, as a result of Judge Dupuy's efforts to assist Compton in her child custody case, Enos filed a criminal complaint against Judge Dupuy with the Galveston County District Attorney's Office.¹⁴
- 79. On January 30, 2013, Enos filed a motion to recuse Judge Dupuy in the *Swenson* Case, and attached a copy of the criminal complaint he had filed against Judge Dupuy and a newsletter publicizing the fact that a criminal investigation had begun.

¹³ Nixon also provided Laird with Judge Dupuy's cell phone, which contained numerous text message purportedly exchanged between the judge and his attorneys and/or their legal staff during the course of the protective order hearing. Specifically, the phone contained text messages suggesting that Judge Dupuy's attorney(s) had met with Compton following her initial testimony about the "murder and flee" plot. In the texts, the attorneys and/or their staff and Judge Dupuy appeared to be bragging about how easy it was to convince Compton to change her testimony.

¹⁴ The Galveston County District Attorney's Office referred the matter to the Texas Attorney General's Office in part because Russell's wife worked for the District Attorney as a prosecutor.

80. On February 6, 2013, Judge Dupuy declined to recuse himself from the *Swenson* Case and ordered the clerk to serve Enos with an Order to Show Cause requiring him to appear before Judge Dupuy on February 28, 2013 to demonstrate why he should not be held in criminal contempt of court for filing the motion to recuse. In the Show Cause notice, Judge Dupuy makes specific reference to the section of Enos' motion pertaining to Enos' filing of a criminal complaint.
81. At the February 12, 2013 recusal hearing in the *Wishart* and *Crowson* Cases, Tara Compton testified that she and Judge Dupuy were engaged and confirmed that he had been assisting her in her child custody case.
82. On February 13, 2013, Judge Underwood signed an order recusing Judge Dupuy from the *Swenson* Case, which was transferred to the County Court at Law No. 1. The judge of that court later vacated Judge Dupuy's Order to Show Cause against Enos.
83. On February 15, 2013, the Houston Chronicle published an article regarding the criminal complaint filed against Judge Dupuy by Enos. Other media outlets in the Galveston and Houston areas also published similar articles during this time.
84. In his testimony at the June 11, 2013 protective order hearing, Judge Dupuy represented that he did not learn that Enos had filed a criminal complaint against him until May 22, 2013; therefore, according to Judge Dupuy, it would have been impossible for him to have retaliated against Enos as alleged in the criminal case.
85. As part of his plea agreement with the State, Judge Dupuy made the following voluntary statement regarding his testimony on June 11, 2013:
- "I, Christopher Michael Dupuy, am under indictment in Cause No. 13-CR-2027 for aggravated perjury. I hereby admit and confess that on the 11th day of June 2013, I did then and there make a false statement under oath and that statement was required or authorized to be made under oath, and I made the statement with the intent to deceive and with knowledge of the statement's meaning, and the statement was that I first learned that Greg Enos filed a criminal complaint against me on May 22, 2013, when in fact, I first learned Greg Enos filed a criminal complaint against me in January 2013."

CJC No. 13-0679-CC

86. Terri Jacobs was a witness in a child custody dispute (the "*Virgin* Case") that was heard by Judge Dupuy on January 31, 2013 and March 1, 2013.
87. According to Jacobs, it appeared that Judge Dupuy's personal legal troubles and his own custody battle improperly influenced his 23-page decision in favor of the father, which was issued a mere 15 minutes after the trial recessed.
88. After Judge Dupuy gave sole possession of the child to the father, the mother, Julie Virgin, appealed the decision, retaining attorney Greg Enos to represent her on appeal.
89. According to Jacobs, on March 29, 2013, Enos filed a motion for new trial and a motion to recuse Judge Dupuy claiming the judge had failed to listen to all of the evidence before rendering a decision.
90. Judge Dupuy denied the motion to recuse on April 3, 2013, but did not forward the motion to the Presiding Judge of the Second Administrative Judicial Region as required by law.

91. On April 29, 2013, Enos notified Presiding Judge Underwood of the motion to recuse and filed a motion requesting the local presiding judge of the county courts at law to refer the motion to recuse to Judge Underwood.
92. On April 30, 2013, Judge Dupuy notified Enos that a hearing was set on May 3, 2013 for “Disqualification and Sanctions against Mr. Enos for continued unethical pleadings.”
93. On May 2, 2013, Judge Barbara Roberts, the local presiding judge of the county courts at law, transferred the *Virgin* Case to County Court at Law No. 1 because Judge Dupuy had failed to forward the motion to recuse to the Presiding Judge.
94. That same day, although a motion to recuse had been filed against him, Judge Dupuy entered an order voiding and striking Judge Robert’s transfer order.
95. The following day, Judge Dupuy denied Enos’ motion for new trial.
96. On May 6, 2013, without conducting a hearing, Judge Dupuy entered a 9-page order disqualifying Enos, imposing \$25,000 in monetary sanctions against him, and referring a grievance against him to the State Bar of Texas.
97. According to Judge Dupuy’s order, Enos was being sanctioned for out-of-court statements and conduct that allegedly occurred in other cases, as well as for his pleadings in the *Virgin* Case.
98. The following day, Judge Roberts entered an Order of Referral, referring Enos’ motion to recuse Judge Dupuy to the Presiding Judge.
99. On May 15, 2013, Judge Dupuy entered another order imposing further sanctions against Enos by striking pleadings that Enos had filed a day earlier.
100. According to Jacobs, Judge Dupuy treated Julie Virgin like a “Tyrant” by taking away her right to be represented on appeal by Enos.

CJC Nos. 13-0097-CC & 13-0458-CC

101. According to Judge Janis Yarbrough, on July 25 – 31, 2012, Judge Dupuy used county email and his official title to contact the District Clerk’s office in an attempt to have an enforcement action filed against him in his personal family law case sealed and threatened the District Clerk with contempt of court and a possible financial penalty if she did not seal these records.
102. Judge Yarbrough provided additional documentation to demonstrate how Judge Dupuy, who was represented by counsel in his personal family law matter, used his position and county email account on more than one occasion to request special consideration and accommodations in the case.
103. Judge Yarbrough and Bonita Quiroga, the Galveston County Director of Justice Administration, contended that Judge Dupuy became hostile and retaliatory toward Quiroga after she refused to authorize the judge’s hiring of a new court coordinator and reported the judge for financial improprieties and misuse of county equipment for personal use.
104. According to documentation provided to the Commission, Judge Dupuy used his position in a series of emails from his county email account to try to intimidate Quiroga by inquiring as to how she was appointed, who appointed her, and when her contract was going to expire.

CJC No. 13-0460-CC

105. Galveston County Judge Mark Henry provided sworn statements describing how the lawsuits, ethics complaints, recusal motions, contempt orders, criminal investigation, and other actions involving Judge Dupuy have been “extremely disruptive to judicial administration in Galveston County.”
106. In his sworn complaint, Judge Henry described Judge Dupuy’s actions on behalf of his court reporter, Lisa Fort, with whom Judge Henry believed Judge Dupuy had a personal relationship outside of the courtroom.
107. According to Judge Henry, Fort had been issued a subpoena to appear and testify at the February 12, 2013 contempt hearing against Lori Laird. The basis for her testimony was personal and unrelated to her work as a court reporter, which prompted Judge Dupuy to send emails to the County Legal Department¹⁵ demanding that the office represent Fort, issue “Motions to Quash & Protection,” or reimburse her for her legal fees if it would not represent her.
108. Judge Henry noted that it was a violation of the law and the Texas Code of Judicial Conduct for Judge Dupuy to give legal assistance and advice to Fort.
109. After Fort was advised that County Legal would not represent her or reimburse her for her legal fees in connection with the subpoena, Judge Dupuy immediately posted derogatory comments about Judge Henry on his Facebook page.

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides that a judge may be disciplined for willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 2A of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall comply with the law...”
3. Canon 2B of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall not allow any relationship to influence judicial conduct or judgment.”
4. Canon 3B(1) of the Texas Code of Judicial Conduct provides, “A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.”
5. Canon 3B(4) of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity....”
6. Canon 3B(5) of the Texas Code of Judicial Conduct provides, “A judge shall perform judicial duties without bias or prejudice.”

¹⁵ Judge Henry pointed out that the County Legal Department represents the Galveston County Commissioners Court, not county employees.

7. Canon 3B(8) of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.”
8. Canon 4G of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall not practice law except as permitted by statute or this Code.”

CONCLUSIONS

The Commission concludes from the evidence presented that Judge Dupuy failed to comply with the law and engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his judicial duties and cast public discredit upon the judiciary and the administration of justice when he used his position and authority to bully, retaliate against, and punish attorneys Lori Laird, Greg Enos, Greg Hughes, and Suzanne Radcliffe for filing motions to recuse, grievances, criminal complaints, and removal actions against him, and for their representation of the judge's ex-wife or involvement in litigation involving the judge's then-girlfriend. Judge Dupuy allowed his adverse relationship with these attorneys and his ex-wife, as well as his personal and intimate relationship with Tara Compton and others, to improperly influence his conduct and judgment.

As a result of those intimate and personal relationships, Judge Dupuy (a) engaged in the improper practice of law, (b) misused government resources, (c) injected himself into personal litigation involving other people's children, (d) failed to disclose the relationships or to recuse from cases involving those with whom he had a close, personal relationship, (e) lied under oath, (f) engaged in witness tampering, (g) harassed, bullied, and maligned County Officials, including Judge Henry, Bonnie Quiroga, and Judge Yarbrough, who he believed were thwarting his efforts to assist these individuals, (h) treated the attorneys and their clients without patience, dignity or courtesy when they appeared in court, (i) subjected attorneys and their clients to biased, unfair, discriminatory, and partial treatment through his rulings and procedures, (j) abused his discretion, and (k) failed to afford these attorneys or their clients with notice, the right to be heard, and other due process safeguards.

The Commission also concludes that Judge Dupuy engaged in criminal conduct in his treatment of Laird, as well as during his testimony at the protective order hearing, as evidenced by the judge's voluntary statements admitting criminal liability. Moreover, the Commission concludes based on the evidence before it that Judge Dupuy also testified falsely when he stated under oath at the protective order hearing that he had never purchased a silencer for his gun when, in fact, he had purchased a silencer on February 16, 2013, and when he stated that the Commission had dismissed all pending complaints against him when, in fact, the Commission had notified him twice through his lawyer that several complaints remained pending and that new complaints had been filed against him. There is no dispute that Judge Dupuy's conduct was egregious and detracted greatly from public confidence in the integrity of the judiciary. In fact, it is unlikely that anything could be more prejudicial to the administration of justice than testifying falsely under oath.

The record before the Commission clearly demonstrated that Judge Dupuy exhibited bad faith in many of the rulings described above. Moreover, this was not a case of a judge committing an error of judgment or lacking diligence. On the contrary, Judge Dupuy clearly knew the law on recusal and the procedures that were to be followed when a motion to recuse was filed, having filed several motions to recuse in his own personal litigation, all of which recited the law and procedures he expected those judges to follow. Moreover, based on his “Order and Notice of Charge of Criminal Contempt and Request for Judge to be Appointed to Determine Lori Laird's Guilt or Innocence and to Determine

Punishment,” there is no dispute that Judge Dupuy knew that Laird was entitled to have his finding of criminal contempt heard by another judge and that it was improper for him to conduct the show cause hearing against Laird on February 11-12, 2013. Therefore, the Commission concludes that Judge Dupuy intentionally misused the judicial office to cause harm to Laird, Radcliffe, Hughes, Enos, their clients, and others connected with them.

Texas jurisprudence in the context of judicial disciplinary actions has defined “willful conduct” to require a showing of intentional or grossly indifferent misuse of judicial office, involving more than an error of judgment or lack of diligence. *In re Davis*, 82 S.W.3d 140, 148 (Tex.Spec.Ct.Rev. 2002), citing *In re Bell*, 894 S.W.2d 119, 126 (Tex.Spec.Ct.Rev. 1995)(willful conduct requires “a showing of bad faith, including a specific intent to use the powers of office to accomplish an end which the judge knew or should have known was beyond the legitimate exercise of authority.”) The term has also been defined as the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross indifference to his conduct. *In re Barr*, 13 S.W.3d 525, 534 (Tex.Rev.Trib. 1998), citing *In re Thoma*, 873 S.W.2d 477, 489-90 (Tex.Rev.Trib. 1994)(“willfulness...necessarily encompasses conduct involving moral turpitude, dishonesty, corruption, misuse of office, or bad faith generally, whatever the motive.”) Based on the record in this matter, the Commission concludes that there is sufficient evidence of bad faith and a lack of proper judicial temperament in Judge Dupuy’s conduct toward Laird, Radcliffe, Hughes, Enos, and those individuals that the judge perceived were acting on his ex-wife’s behalf or against his girlfriend in her personal litigation.

The Commission concludes that Judge Dupuy’s conduct, as described herein, constituted willful or persistent violations of Article V, §1-a(6)A of the Texas Constitution, and Canons 2A, 2B, 3B(1), 3B(4), 3B(5), 3B(8) and 4G of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 2B, 3B(1), 3B(4), 3B(5), 3B(8), and 4G of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution, it is the Commission’s decision to issue a **PUBLIC REPRIMAND** to the Honorable Christopher Dupuy, former Judge of County Court at Law No. 3, Galveston, Galveston County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state’s judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 23rd day of October, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 14-0106-JP & 14-0264-JP

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE BOBBY R. NICHOLDS
JUSTICE OF THE PEACE, PRECINCT 3
TRINITY, TRINITY COUNTY, TEXAS**

During its meeting on October 15-16, 2014, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Bobby R. Nicholds, Justice of the Peace, Precinct 3, Trinity, Trinity County, Texas. Judge Nicholds was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Bobby R. Nicholds was Justice of the Peace, Precinct 3, Trinity, Trinity County, Texas.¹

The Toy Drive

2. Prior to the Christmas holidays in 2013, Judge Nicholds prepared the following flyer:

"Help me help little ones have a good Christmas. We will be having a toy drive at Judge Nicholds Office. Anything would be greatly appreciated. Thank you for the help. Judge Nicholds."

¹ Judge Nicholds' current term as justice of the peace ends on December 31, 2014. Although Judge Nicholds did not seek reelection to that bench, he is currently serving as the municipal court judge for the City of Trinity, Texas.

3. The flyer contained the phone number for the court, as well as Judge Nicholds' personal phone number.
4. Although witnesses claimed that the flyer was posted at the courthouse and other county buildings, Judge Nicholds averred that the flyer was only posted at private businesses in the City of Trinity.
5. The toy drive referred to in the flyer was affiliated with Judge Nicholds' church, and was part of the church's "Toy Program," for which Judge Nicholds had served as the administrator for the past ten years.
6. Judge Nicholds estimated that approximately 100 toys were collected during the 2013 toy drive, which were brought to the courthouse, the church, and his home. The toys were then distributed to underprivileged children in the community at another location.
7. In his written response to the Commission's inquiry, Judge Nicholds stated that he participated in the toy drive for the sole purpose of assisting underprivileged children in the community.
8. According to Judge Nicholds, he did not use the toy drive as a means to obtain "political gain" and/or to further any of his own private interests.

Dismissing Cases without a Motion from the State

9. On or about October 10, 2011, a defendant appeared in Judge Nicholds' court to enter a plea to a speeding citation.
10. During the appearance, the defendant provided Judge Nicholds with "paperwork" indicating that his car had "tire damage," which the defendant alleged affected his car's speedometer and therefore caused him to be unaware of his actual speed.
11. After reviewing the paperwork and listening to the defendant's claims, Judge Nicholds concluded that it was not the defendant's "fault" that he had been speeding, and thereafter dismissed the citation, in exchange for a \$20.00 "dismissal fee."
12. The State did not request and/or file a motion to dismiss the citation; was not present at the defendant's court appearance; and was never involved in any of the proceedings.
13. When asked to describe the typical procedures that he follows when dismissing criminal cases, Judge Nicholds indicated that he typically "weigh[s] the evidence" presented to him and considers the circumstances involved in each case to determine if a dismissal is appropriate.
14. Judge Nicholds acknowledged that he makes the determination without any involvement or input from the State, and instead dismisses criminal cases based solely on his own independent review of the evidence submitted to him by the defendant.
15. Judge Nicholds denied that he dismissed a case as a favor to a friend, and stated that in every instance in which he dismissed a case he did so after making a finding that there was "good cause" for the dismissal.

16. The records provided by the court indicate that Judge Nicholds routinely charges defendants a \$20.00 dismissal fee in virtually every case in which he issues a dismissal.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct provides, in relevant part, that, “A judge shall comply with the law...”
2. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part, that, “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.”
3. Canon 3B(2) of the Texas Code of Judicial Conduct provides, in relevant part, that, “A judge shall maintain professional competence in [the law].”

CONCLUSION

The Commission concludes, based on the facts and evidence before it, that Judge Nicholds allowed his name, judicial title, and court facilities to be used to promote the private interests of his local church. Although the Texas Code of Judicial Conduct generally permits, and even encourages, judges to be involved in charitable and other community-based activities that do not reflect adversely on the judges’ impartiality or interfere in the performance of judicial duties, Canon 2B prohibits a judge from lending the prestige of judicial office to advance the private interests of the judge or others while engaging in such extrajudicial conduct. Because Judge Nicholds used his name and judicial title in the flyers promoting the church’s toy drive; utilized the courthouse to collect toys on behalf of the church; and allowed the court’s phone number to be used as a point of contact for the church’s toy drive, Judge Nicholds advanced the private interests of the church in a manner that was incompatible with the Texas Code of Judicial Conduct.

The Commission further concludes, based on the facts and evidence before it, that Judge Nicholds routinely and persistently failed to comply with the law and displayed a lack of professional competence in the law when he dismissed traffic citations without a motion from the State, in exchange for a \$20.00 dismissal fee. A judge does not have the authority to dismiss traffic citations without a motion from the State except in certain specified cases, as delineated by the Texas Transportation Code. Citations issued for speeding or other “non-compliance” violations are not among the types of cases that the Transportation Code authorizes a judge to dismiss.²

The Commission concludes that Judge Nicholds’ conduct in the above-described matters constituted willful and/or persistent violations of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct. In reaching this decision, the Commission took into account a prior public sanction issued to Judge Nicholds as an aggravating factor.

² The Texas Transportation Code allows a judge to dismiss certain citations, commonly referred to as “compliances cases,” upon receipt of proof that the defendant has corrected or remedied a defect, including citations issued for an expired inspection sticker or a failure to properly display a license plate. In such cases, the maximum fee that can be assessed when dismissing a compliance case ranges from \$10.00 to \$20.00 depending on the nature of the citation.

In condemnation of the conduct described above that violated Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Bobby R. Nicholds, Justice of the Peace, Precinct 3, Trinity, Trinity County, Texas.

Pursuant to this Order, Judge Nicholds must obtain **two (2) hours** of instruction with a mentor, in addition to his required judicial education for Fiscal Year 2015. In particular, the Commission desires that Judge Nicholds receive this additional education in the following areas: 1) avoiding lending the prestige of judicial office to advance the private interests of the judge or others; 2) the permitted circumstances in which a judge may dismiss a criminal case; and 3) the proper assessment of dismissal fees when dismissing compliance cases in accordance with the Texas Transportation Code.

Pursuant to the authority contained in §33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center or the Texas Municipal Courts Education Center to the extent necessary to enable those entities to assign the appropriate mentor for Judge Nicholds in this case.

Judge Nicholds shall complete the additional **two (2) hours** of instruction recited above within **sixty (60) days** from the date of written notification of the assignment of a mentor. It is Judge Nicholds' responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **two (2) hours** of instruction described herein, Judge Nicholds shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 18th day of November, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 14-0823-JP

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE ESEQUIEL ("CHEQUE") DE LA PAZ
JUSTICE OF THE PEACE, PRECINCT 4
KINGSVILLE, KLEBERG COUNTY, TEXAS**

During its meeting on October 15-16, 2014, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Esequiel ("Cheque") De La Paz, Justice of the Peace for Precinct 4, Kingsville, Kleberg County, Texas. Judge De La Paz was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Esequiel ("Cheque") De La Paz, was Justice of the Peace for Precinct 4, Kingsville, Kleberg County, Texas.
2. In March of 2014, Judge De La Paz met privately with an electrician who informed the judge that he had not been paid by the contractor for electrical work performed at a building site.
3. After meeting with the electrician, Judge De La Paz met with a Kingsville building inspector to determine if the electrician's work had been completed and whether the building inspector had issued a "green tag" at the building site, which would have permitted the contractor to turn on the electricity at the property.
4. Shortly thereafter, on or about April 3, 2014, Judge De La Paz telephoned the home of the contractor. In a conversation with the contractor's teenage son, Judge De La Paz identified himself and advised the son that his father owed money to the electrician; his father needed to pay the electrician; the judge was trying to save his father "court fees;" and the father needed to call the court about the "balance that was being claimed" by the electrician.

5. Shortly thereafter, the contractor called Judge De La Paz to discuss the electrician's claims.
6. During this call, Judge De La Paz advised the contractor that it would be "best for [him] to pay the electrician to avoid the costs associated with going to court" and insisted that the contractor should pay the electrician.
7. In addition, Judge De La Paz informed the contractor that he had already spoken to the city's building inspector and had learned that a green tag had been issued to the contractor. The judge also advised the contractor that the building inspector might need to be summoned to court to testify if the electrician filed a lawsuit against him.
8. At the time of the above-described events, there was no case pending in Judge De La Paz's court relating to the dispute between the contractor and the electrician.
9. On or about May 15, 2014, the electrician filed a lawsuit against the contractor in Judge De La Paz's court claiming that the contractor had breached the parties' contract.
10. The contractor retained an attorney and subsequently filed a counterclaim, in which he alleged that the electrician had breached the parties' contract by failing to satisfactorily perform his job. In particular, the counterclaim alleged that the contractor had been required to retain the services of another electrician to correct the defective work and to complete the job as contemplated by the parties' contract.
11. The contractor also filed a "Motion to Recuse Judge," based on Judge De La Paz's previous communications with the parties in the case, as well as with the city's building inspector. In the motion, the contractor alleged that Judge De La Paz's conduct had caused him to have "personal knowledge of disputed evidentiary facts in this case" and to develop a bias in the case in favor of the electrician.
12. Judge De La Paz agreed to recuse himself and transferred the case to another justice of the peace in the county, who held a trial on July 29, 2014.
13. Following trial, the other justice of the peace concluded that the electrician had not satisfactorily performed his work in accordance with the parties' contract, and that the contractor had incurred additional expenses in correcting the defective work performed by the electrician.
14. The other justice of the peace issued a judgment in favor of the contractor on his counterclaim, and further ordered the electrician to pay the contractor's attorney's fees.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall comply with the law ..."
2. Canon 2B of the Texas Code of Judicial Conduct provides, in relevant part: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge."
3. Canon 3B(2) of the Texas Code of Judicial Conduct states, in relevant part, that: "A judge should be faithful to the law and shall maintain professional competence in it."

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge De La Paz failed to comply with the law and demonstrated a lack of professional competence in the law by intervening in a private dispute between the contractor and the electrician when no case was pending in his court. Further, Judge De La Paz exceeded his authority when he conducted an independent investigation into the merits of the electrician's claims by meeting with a witness and the parties to the dispute. As a result of his independent investigation, Judge De La Paz obtained information from an extra judicial source and used that information to form an opinion that the contractor was indebted to the electrician. In all of his actions on behalf of the electrician, Judge De La Paz lent the prestige of his judicial office to advance the electrician's private interests and gave the impression that the electrician was in a special position to influence the judge. By attempting to assist the electrician in recovering payment from the contractor, Judge De La Paz abandoned his judicial role as a neutral and independent arbiter of the facts, which necessitated his recusal from the case once the matter was filed in his court. In light of the above, the Commission concludes that Judge De La Paz engaged in willful and persistent violations of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct. In reaching this decision, the Commission considered as an aggravating factor the fact that it had recently issued a public sanction against Judge De La Paz for substantially similar conduct.

In condemnation of the conduct described above that violated Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to Judge Esequiel ("Cheque") De La Paz, Justice of the Peace, Precinct 4, Kingsville, Kleberg County, Texas.

Pursuant to this Order, Judge De La Paz must obtain **two (2) hours** of instruction with a mentor judge, in addition to his required judicial education in Fiscal Year 2015. In particular, the Commission desires that Judge De La Paz receive this additional instruction in the area of (1) the limits of a judge's authority to intervene in or mediate disputes that are not pending in his court; (2) avoiding the use of the prestige of judicial office to advance the private interests of the judge or others; and (3) maintaining impartiality by avoiding independent investigations into the merits of matters that may come before the court.

Judge De La Paz shall complete the additional **two (2) hours** of instruction described above within **sixty (60) days** from the date of written notification from the Commission of the assignment of a mentor. Upon receipt of such notice, it is Judge De La Paz's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **two (2) hours** of instruction described above, Judge De La Paz shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 19th day of December, 2014.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



BEFORE THE STATE COMMISSION ON JUDICIAL CONDUCT

CJC No. 14-0745-DI

PUBLIC WARNING

**HONORABLE CARLOS CORTEZ
FORMER JUDGE, 44TH JUDICIAL DISTRICT COURT
DALLAS, DALLAS COUNTY, TEXAS**

During its meeting on February 18-20, 2015, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Carlos Cortez, Former Judge of the 44th District Court, Dallas, Dallas County, Texas.

BACKGROUND INFORMATION

Judge Cortez was elected to the 44th District Court bench in November 2006, and assumed the bench on January 1, 2007. Beginning in late 2013 and continuing into 2014, coinciding with the primary election period during which the judge was running for re-election, Judge Cortez was the subject of numerous disparaging media stories concerning, among other things, allegations of criminal conduct. The media reports were widespread, including local, state and national publications.

Because the conduct described in these media reports, if true, would have constituted willful and/or persistent judicial misconduct, including criminal conduct in some instances, the Commission initiated the above-referenced complaint against Judge Cortez in order to investigate four main areas of potential misconduct asserted in the media coverage: (1) allegations that the judge used illegal drugs and hired prostitutes;¹ (2) allegations that the judge violated the Texas Election Code and/or the Texas Penal Code regarding the use of officeholder funds and campaign contributions, and regarding the reporting of travel reimbursement and other expenditures; (3) allegations surrounding the judge's December 2013, arrest for allegedly assaulting his then-

¹ These allegations came to the Commission's attention as the result of media attention surrounding the court-ordered release of certain documents Judge Cortez sought to have sealed following the dismissal of the defamation lawsuit he filed against a Dallas attorney. The Commission determined that there was insufficient evidence to support a finding that the judge engaged in this conduct.

girlfriend;² and (4) allegations surrounding a criminal investigation by the Dallas Police Department into a report that the judge sexually assaulted a woman at his home in November 2013.³

With regard to the allegations surrounding Judge Cortez's December 2013 arrest and the decision of the grand jury not to indict him, the Commission focused on information that came to light as a result of the judge's subsequent release to the media of audio and video recordings respecting the complaining witness in the alleged assault case. The judge's actions prompted his former girlfriend to hold a press conference with her attorney and to release her own recordings of conversations between herself and the judge, many of which depicted the judge engaging in lewd, profane and derogatory language toward his girlfriend; descriptions of physical violence allegedly committed by the judge against the girlfriend; discussions as to the complaining witness's contention the judge posted nude photos of her on the Internet; and discussions of numerous trips the two had taken together while they were dating. These recordings, which were transcribed and published in the media, would raise questions about whether Judge Cortez properly reported these travel expenses in his campaign finance reports and/or whether he properly reimbursed himself for the travel expenses using officeholder/campaign funds.

Judge Cortez was advised by letter of the Commission's concerns and provided written responses. Judge Cortez appeared with counsel before the Commission on February 20, 2015, and gave testimony. Based on the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Carlos Cortez was Judge of the 44th District Court in Dallas, Dallas County, Texas.
2. On or about August 7, 2013, Judge Cortez filed a political expenditure report with the Texas Ethics Commission for travel expenses incurred in the amount of \$6,267.62, for which he reimbursed himself from campaign funds.
3. On or about November 19, 2013, Judge Cortez filed political expenditure reports with the Texas Ethics Commission for travel expenses incurred in the amounts of \$3,437.10, \$1,932.622, and \$3,562.31, for which he reimbursed himself from campaign funds.
4. These campaign finance reports, which were signed by Judge Cortez, failed to comply with the reporting requirements set forth in Texas Ethics Commission Rule §20.63.(d), in that the judge failed to disclose details of the travel expenses for which he had been reimbursed.
5. In his written responses to the Commission's inquiries and in his testimony before the Commission, Judge Cortez was unable to provide records to substantiate that he was entitled to reimbursement for travel in the amounts reported to the Texas Ethics Commission.

² That criminal investigation ended in March 2014, with a Dallas County grand jury failing to issue a true bill of indictment.

³ That criminal investigation concluded in July 2014, with no charges being filed against the judge.

6. Judge Cortez testified that any failure to properly report political expenditures was due to the failure of an attorney hired by the judge to maintain his financial records and complete the reports.
7. Judge Cortez testified that the attorney was unable or unwilling to provide assistance in recovering financial records that would support the reported expenditures.
8. Judge Cortez acknowledged that he reviewed the campaign finance reports prepared by his attorney and signed them, thereby swearing that the information contained in the reports was accurate.
9. Judge Cortez testified that he no longer used the attorney to prepare and file his campaign finance reports, and that the judge prepared and filed the most recent report filed with the Texas Ethics Commission in January 2015; however, when questioned about a \$51,000 political expenditure incurred at a restaurant in October 2014, Judge Cortez testified that this information was incorrect and was the result of a “typo.”
10. Judge Cortez testified that he intended to correct the “typo” in the January 2015 report and file amended reports with the Texas Ethics Commission that either (a) accounted for the full amounts for which he had been reimbursed, or (b) reflected any offset between what the campaign owed him and for what he may have reimbursed himself that he cannot support with receipts or other financial records.
11. Pursuant to Texas Ethics Commission Rule §20.63(e), a candidate’s or officeholder’s failure to comply with subsection (d) may not be cured by filing a corrected report after the report deadline has passed.
12. Moreover, a candidate or officeholder who violates §20.63(d) is deemed to have converted political funds to personal use, in violation of Texas Election Code §253.035.
13. Audio recordings of conversations between Judge Cortez and his then-girlfriend that were publicized in the media contained numerous statements by the judge that cast public discredit upon the judiciary.
14. When questioned about the accuracy of the information contained in the published recordings, specifically in connection with the allegation that the judge had retaliated against his then-girlfriend following a fight by posting nude photos of her on the Internet, Judge Cortez refused to admit or deny the claim, stating that he would not respond because he intended to file a civil lawsuit against her.

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”
2. Article V, §1-a(6)A of the Texas Constitution states, in pertinent part, that a judge may be disciplined for “willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Cortez failed to comply with the law when he reimbursed himself from campaign funds for travel expenses that were not properly reported to the Texas Ethics Commission. The judge's acceptance of travel reimbursements that were not supported by complete and accurate disclosures to the public as required through these reports constituted conversion of public funds to his personal use in violation of the Texas Election Code. The fact that the reports were prepared and filed by the judge's attorney does not mitigate Judge Cortez's responsibility as the officeholder/candidate to ensure the accuracy of the reports before signing them. The Commission concludes that Judge Cortez's conduct, as described above, constitutes willful and/or persistent violations of Canon 2A of the Texas Code of Judicial Conduct.

The Commission also concludes based on the facts and evidence before it that Judge Cortez engaged in willful conduct that resulted in the negative attention and criticism levied against him in the press during 2013 and 2014, therefore casting public discredit not just on the judge, but on the rest of the judiciary in Dallas County and across the State. While the judge contends that the Dallas County media was biased against him and motivated by a conspiracy of relationships with local attorneys who were adversarial to the judge, there is no question that Judge Cortez, through his own personal conduct, provided any person, including political enemies, and the press with sufficient information that could be used against him. The Commission concludes that Judge Cortez's conduct, as described above, violated Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canon 2A of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC WARNING** to the Honorable Carlos Cortez, Former Judge of the 44th District Court, Dallas, Dallas County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC WARNING** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 9th day of March, 2015.

ORIGINAL SIGNED BY

Hon. Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC No. 14-1037-AP

PUBLIC ADMONITION

**HONORABLE NORA LONGORIA
JUSTICE, THIRTEENTH COURT OF APPEALS
EDINBURG, HIDALGO COUNTY, TEXAS**

During its meeting on February 18-20, 2015, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Nora Longoria, Justice on the Thirteenth Court of Appeals in Edinburg, Hidalgo County, Texas. Judge Longoria was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Nora Longoria was a Justice on the Thirteenth Court of Appeals in Edinburg, Hidalgo County, Texas.
2. On or about July 12, 2014, Justice Longoria was stopped by a McAllen police officer for allegedly driving 69 mph in a posted 55 mph zone.
3. During the traffic stop, the officer asked the judge to exit her vehicle and perform a field sobriety test because he detected the odor of alcohol emitting from the judge's breath and observed that her speech was slurred.
4. When the officer inquired if she had been drinking any alcoholic beverages that evening, Justice Longoria advised him that she had consumed "about five beers."
5. After being informed that she had failed the field sobriety test, Justice Longoria was placed under arrest.
6. When the officer attempted to place her handcuffs, however, Justice Longoria became emotional and uncooperative, demanding that a supervisor come to the scene.

7. Justice Longoria was eventually handcuffed and transported to the McAllen Police Department, where she was charged with driving while intoxicated and released on a \$2,000 recognizance bond.
8. Justice Longoria's arrest for allegedly driving while intoxicated received local media attention.
9. On November 20, 2014, Justice Longoria entered a plea of no contest to a speeding charge and paid a \$500 fine; the driving while intoxicated charge was dismissed.
10. The dismissal of the charge against the judge received widespread local and national media attention, which included the release of the police officer's dash cam video recording of the judge's traffic stop and arrest on the Internet.
11. The McAllen Police Department provided a copy of the dash cam video recording to the Commission, which revealed, among other things, that Justice Longoria (a) repeatedly identified herself as a judge and offered to show her judicial badge to the officers without being asked for that information; (b) repeatedly pleaded with the officer not to arrest her, to issue her a warning, and to let her go home; and (c) stated that the officer was "ruining her life and career."

RELEVANT STANDARDS

1. Article V, Section 1-a(6)A of the Texas Constitution provides that any Texas justice or judge may be disciplined for willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.
2. Canon 2B of the Texas Code of Judicial Conduct states, in relevant part, that: "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others."

CONCLUSION

The Commission concludes based on the facts and evidence before it that Justice Longoria repeatedly identified herself to police officers as being a judge, offered to show the officers her judicial badge, and attempted to use her position as a judge to obtain favorable treatment and escape the consequences of her conduct, in willful and persistent violation of Canon 2B of the Texas Code of Judicial Conduct. Furthermore, the judge's conduct during the traffic stop, her arrest for driving while intoxicated, and her subsequent plea of no contest to a speeding charge received widespread media attention which cast public discredit upon the judiciary and the administration of justice, in violation of Article V, §1-a(6)A of the Texas Constitution.

In condemnation of the conduct described above that violated Canon 2B of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Nora Longoria, Justice on the Thirteenth Court of Appeals in Edinburg, Hidalgo County, Texas.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC ADMONITION** by the Commission.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 13th day of March, 2015.

ORIGINAL SIGNED BY

Honorable Steven L. Seider, Chair
State Commission on Judicial Conduct



**BEFORE THE STATE COMMISSION
ON JUDICIAL CONDUCT**

CJC Nos. 13-0772-JP AND 14-0510-JP

**PUBLIC REPRIMAND
AND
ORDER OF ADDITIONAL EDUCATION**

**HONORABLE TERESA M. MELENDREZ
JUSTICE OF THE PEACE, PRECINCT 4, PLACE 1
EAGLE PASS, MAVERICK COUNTY, TEXAS**

During its meeting on February 18-20, 2015, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Teresa M. Melendrez, Justice of the Peace, Precinct 4, Place 1, Eagle Pass, Maverick County, Texas. Judge Melendrez was advised by letter of the Commission's concerns and provided written responses. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Teresa M. Melendrez was Justice of the Peace, Precinct 4, Place 1, in Eagle Pass, Maverick County, Texas.

CJC No. 13-0772-JP

2. On July 11, 2012, Hector Peña filed a small claims action against Perla Pardo regarding the sale of a vehicle. The case was filed in Judge Melendrez's court and Pardo was served with citation that same day.
3. Thereafter, Pardo was summoned to appear in Judge Melendrez's court on August 1, 2012. When Pardo appeared, Peña was also present, and both parties proceeded to explain the facts of the case to Judge Melendrez.

4. At the conclusion of the proceedings, according to a docket sheet entry, Judge Melendrez ordered Pardo to return the vehicle to Peña.
5. According to Pardo, she was advised to return to the court on August 16, 2012, at which time Judge Melendrez again entered no written judgment, but stated that she was going to refer the matter to the Eagle Pass Police Department for an investigation.
6. In January 2013, Judge Melendrez asked Pardo to return to court for another hearing in the matter.
7. Concerned about Judge Melendrez's earlier statement that she was going to refer the matter to law enforcement, Pardo contacted a detective at the Eagle Pass Police Department, who verified that there was no criminal case pending.
8. Pardo appeared in court on January 16, 2013, and agreed to pay Peña a total of \$5,000 in monthly payments of \$400.
9. Although this agreement was memorialized in a handwritten notation on the court's docket sheet, which both Pardo and Peña signed, no written judgment was issued by the court.¹
10. According to Pardo, she entered into the agreement after Judge Melendrez threatened her with criminal charges and jail.
11. In December 2013, Judge Melendrez issued a criminal summons styled *State of Texas vs. Perla Pardo*. The summons, which contained no case number, was served on Pardo by a law enforcement officer. The summons ordered Pardo to appear in Judge Melendrez's court on December 18, 2013 "pertaining to allegations of an offense against the laws of said State, to wit: Civil Matter..."
12. On December 18, 2013, Judge Melendrez signed a handwritten note that stated, "Start payments in January 15, 2014 payments of \$100.00 dills till balance is pay in full. Bal. \$4,350.00 dills," This document did not reference a case number nor did it identify the parties to the agreement.
13. In her written responses to the Commission's inquiry, Judge Melendrez denied threatening Pardo with jail.
14. Judge Melendrez further explained that all of the court appearances of Pardo and Peña were informal in nature and were intended to be more like mediations than formal judicial hearings.

CJC No. 14-0510-JP

15. On December 12, 2013, Moises Cantu III filed a petition for divorce against Antonia Perez in the 293rd Judicial District Court in Maverick County, Texas.
16. On that same day, Judge Melendrez issued a criminal summons in a case styled *State of Texas vs. Antonia Perez*. The summons, which contained no case number, was served on Perez by law enforcement officers. The summons ordered Perez to appear in Judge Melendrez's court on December 18, 2013 "pertaining to allegations of an offense against the laws of said State, to wit: Civil Matter..."
17. On the evening of December 17, 2013, law enforcement officers escorted Perez out of a local restaurant, served her with the criminal summons, and took a photograph of her vehicle, a 2008 Jeep Wrangler, which was then emailed to Judge Melendrez's court clerk.

¹ In response to the Commission's inquiry, Judge Melendrez provided the Commission with an unsigned copy of a written judgment in the case.

18. When Perez appeared before Judge Melendrez the following evening, she learned that Judge Melendrez was intending to order her to return the Jeep to Cantu.
19. Perez attempted to explain to Judge Melendrez that the Jeep was community property purchased during the marriage; that the value of the Jeep exceeded the court's \$10,000 jurisdiction; that a divorce proceeding was currently pending in the district court; and that the district court would determine ownership and possession of the Jeep and other property belonging to the couple.
20. In response, Judge Melendrez advised Perez that the court's \$10,000 jurisdictional limit would not affect her decision because they were only discussing possession, not ownership.
21. Thereafter, Judge Melendrez issued a judgment in case number S13-031JP4, styled *Moises Cantu III vs. Antonia Perez*, ordering Perez to return possession of the Jeep to Cantu.
22. When Perez asked about her appellate remedies, Judge Melendrez advised her that she could not appeal the decision, but could "fight" for the vehicle in the district court divorce proceedings.
23. In response to the Commission's inquiry, Judge Melendrez provided a copy of the court file in connection with the Perez case, which contained no complaint or pleadings filed by Cantu and no evidence that Perez had been served with citation or notice of any pending lawsuit filed in Judge Melendrez's court.
24. Although the copy of the criminal summons and the judgment provided by Judge Melendrez indicated that case number S13-031JP4 had been written by hand across the top of the documents, the copies provided to Perez did not contain this information.
25. In addition, the court file contained no entries on the court docket sheet other than the date "December 18, 2013."
26. Although Judge Melendrez provided affidavits from law enforcement officers indicating that Perez had been avoiding service of the criminal summons prior to December 17, 2013, the Peace Officer's Return from the Maverick County Constable's Office reflected that there had been no prior attempts at service.
27. Perez and her aunt advised the Commission that Cantu's mother had previously threatened to have Judge Melendrez intervene in the dispute over the Jeep, and had represented that she was in a special relationship to influence the judge.
28. When asked by Perez's aunt if the judge and Cantu's mother knew each other, Judge Melendrez laughed at her and stated, "I know everybody in town."
29. In response to the Commission's inquiry, Judge Melendrez specifically denied meeting with any party in the case before the hearing on December 18, 2013.
30. Judge Melendrez admitted that she signed a criminal summons, but explained that it was mistakenly used and that she mistakenly signed it.
31. Although Perez was summoned to appear before Judge Melendrez for a formal hearing in the case, Judge Melendrez averred that she merely conducted an informal mediated settlement with the parties.
32. Because she wanted to speak informally with the parties to see if an agreement could be reached, Judge Melendrez explained that she refused to allow any family members to enter the court room or attend the proceedings.

33. Judge Melendrez also claimed that she “did not understand that the [Jeep] was marital property that was the subject of the divorce proceeding;” however, an audio recording of the proceedings confirmed that Perez attempted to bring this information to the judge’s attention on several occasions.
34. The audio recording also reflected that when Judge Melendrez discovered certain items had been removed from the Jeep, she urged Cantu to file a theft report with law enforcement, stating “Okay [inaudible] need for you to do police report. Go to the police department, or the sheriff’s department, or whatever, maybe the sheriff’s department...I just need a report number and we can file it later.”

RELEVANT STANDARDS

1. Canon 2A of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge shall comply with the law ...”
2. Canon 3B(2) of the Texas Code of Judicial Conduct provides, in pertinent part, “A judge ... shall maintain professional competence in [the law.]”
3. Canon 6C(2) of the Texas Code of Judicial Conduct provides, in pertinent part, “A justice of the peace ... shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.”

CONCLUSION

The Commission concludes based on the facts and evidence before it that Judge Melendrez failed to comply with the law and demonstrated a lack of professional competence in the law by (a) entering a judgment in the Perez case in the absence of pleadings, without serving Perez with citation, and without providing Perez adequate notice of the hearing; (b) issuing criminal summonses in civil cases; (c) failing to reduce her rulings in the Pardo case to final written, appealable judgments; (d) failing to afford Pardo or Perez the right to appeal the court’s judgment; (e) presiding over a matter over which the court lacked jurisdiction; (f) maintaining incomplete and/or inaccurate court records; and (g) conducting informal private mediations of disputes without proper notice to the parties, while excluding individuals from entering the courtroom to observe the proceedings in violation of the open courts doctrine. Based on the audio recording, the Commission also concludes that at the time of the December 18, 2013 hearing in the Perez matter, Judge Melendrez demonstrated an awareness of certain facts and evidence that appeared to have been provided to the judge from an *ex parte* or extra-judicial source. The Commission concludes that Judge Melendrez’s conduct, as described above, constituted willful and/or persistent violations of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct, it is the Commission’s decision to issue a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** to the Honorable Teresa M. Melendrez, Justice of the Peace, Precinct 4, Place 1, Eagle Pass, Maverick County, Texas.

Pursuant to this Order, Judge Melendrez must obtain **eight (8) hours** of instruction with a mentor, in addition to her required judicial education for Fiscal Year 2015. In particular, the commission desires that Judge Melendrez receive this additional education in the following areas: (1) the proper use of

criminal and civil summonses; (2) the proper role of the judge as a neutral, fair and impartial arbitrator when hearing and deciding civil cases; (3) the open courts doctrine; (4) alternative dispute resolution procedures under Rule 503.5 of the Texas Rules of Civil Procedure; (5) avoiding both the appearance and the reality of improper *ex parte* communications; (6) proper record-keeping procedures, including but not limited the requirement to reduce judgments and orders to writing; (7) rules and procedures governing a litigant's right to appeal a judgment; and (8) trial settings and notice requirements under Rule 503.3 of the Texas Rules of Civil Procedure.

Pursuant to the authority contained in §33.036 of the Texas Government Code, the Commission authorizes the disclosure of certain information relating to this matter to the Texas Justice Court Training Center to the extent necessary to enable that entity to assign the appropriate mentor for Judge Melendrez in this case.

Judge Melendrez shall complete the additional **eight (8) hours** of instruction recited within **sixty (60) days** from the date of written notification of the assignment of a mentor. It is Judge Melendrez's responsibility to contact the assigned mentor and schedule the additional education.

Upon the completion of the **eight (8) hours** of education described herein, Judge Melendrez shall sign and return the Respondent Judge Survey indicating compliance with this Order. Failure to complete, or report the completion of, the required additional education in a timely manner may result in further Commission action.

Pursuant to the authority contained in Article V, §1-a(8) of the Texas Constitution, it is ordered that the actions described above be made the subject of a **PUBLIC REPRIMAND AND ORDER OF ADDITIONAL EDUCATION** by the Commission.

The Commission has taken this action in a continuing effort to protect the public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this the 19th day of March, 2015.

ORIGINAL SIGNED BY

Hon. Steven L. Seider, Chair
State Commission on Judicial Conduct